EVART JENSEN

IBLA 70-676 Decided March 6, 1972

Appeal from decision by Dent Dalby, Departmental hearing examiner, dismissing in part a grazing appeal, Utah 3-70-3, on the ground of prior Final Adjudication.

Reversed and remanded

Grazing Permits and Licenses: Generally--Grazing Permits and Licenses: Apportionment of Federal Range

Where a grazing applicant has executed a valid range-line agreement approved by this Department such an agreement has generally been treated by the Department as an enforceable contract. Therefore, those items specifically spelled out in the agreement which are unmistakably clear are binding upon the parties unless changed by their mutual consent with the approval of the Bureau of Land Management.

Grazing Permits and Licenses: Appeals--Grazing Permits and Licenses: Apportionment of Federal Range--Rules of Practice: Appeals: Generally

Where a grazing applicant signs a range-line agreement which is incorporated in a district manager's decision from which the applicant does not protest or appeal, the applicant is thereafter barred from challenging only those matters adjudicated in that decision. However, where the applicant subsequently appeals a district manager's partial rejection of his current grazing privileges, that appeal may properly be considered on its merits where it raises an issue of a boundary location which clearly was not the subject of the range-line agreement relied upon.

APPEARANCES: Evart Jensen, pro se.

OPINION BY MR. STUEBING

Evart Jensen has appealed from a hearing examiner's order of June 23, 1970, granting, in part, a Government motion to dismiss his

appeal from a decision dated March 6, 1970, of the Bureau of Land Management's district manager for the Fillmore, Utah, grazing district.

The district manager's decision concurred with the recommendations of the district advisory board and denied in part Jensen's application for his 1970-71 grazing privileges. The decision rejected Jensen's application for grazing use in excess of his prior privileges because the rejected portion was outside the appellant's area of use and in excess of his Federal range qualifications. The decision also stated that the State lease sections in the Lund allotment might be authorized for exchange-of-use purposes if the appellant secured a range-line agreement with the other range users in that area.

Appellant, unwilling to accept the district manager's determination as to his 1970 privileges, appealed to the hearing examiner. In his appeal he objected to his designated area of use, the amount of the proposed license and the failure to grant Federal range use in exchange for use of his leased State land.

The hearing examiner, prior to a hearing being held, granted the Bureau of Land Management's motion to dismiss the appeal as to all issues except appellant's request for exchange of use. The examiner upheld the district manager's decision citing a prior final adjudication on these same issues in a decision of April 11, 1967, from which appellant did not raise a timely appeal.

Although the examiner ruled that there still remains to be a hearing on the issue of whether the district manager's denial of appellant's request for exchange of use was arbitrary or capricious, appellant has chosen to raise an immediate appeal of the examiner's initial order dismissing the other issues. Appellant reiterates the same arguments he has put forth in prior proceedings inhis continuous efforts to increase his grazing use. 1/ Appellant refers to his historical use of these grazing lands prior to the 1967 adjudication and raises various objections to all actions taken since 1967. He disavows the significance and the import of the agreement he signed March 15, 1967,

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1/ Appellant previously attempted a similar appeal from a Fillmore District Manager's decision adjudicating his application for grazing use for 1969. The matters raised by that appeal were subsequently dismissed by a Hearing Examiner's order of June 30, 1969, because of Jensen's failure to file a timely appeal.

at the Fillmore District Grazing Office with Clyde Dorius and Wesley Johnson. Appellant insists that he was assured by representatives of the Bureau of Land Management that the division line between the Jensen/Johnson and the Clyde Dorius allotments had no effect on the controversy over the west boundary location of his allotment. Appellant contends essentially that he had no intent for the western boundary line to be limited to "the top of the high Ridge" and he has been misled because of his signing this 1967 agreement.

The record shows that the present conflict over the extent and conditions of appellant's 1970-71 grazing use has been a continuing problem which has developed from his apparent unwillingness to acknowledge the terms of settlement of a dispute over his grazing area in 1967. On March 15, 1967, following an extensive review of the grazing situation in the area by the district advisory board, and the Bureau of Land Management, appellant and two other grazing licensees, Wesley Johnson and Clyde Dorius, executed a range agreement which redistributed the grazing use in the Japs Valley Allotment in accordance with the recommendations of the district advisory board. 2/ The terms of the agreement designated the parties' class 1 qualifications and the carrying capacity of the Federal range. It spelled out which pasture areas would be used by each participant during which months of the year and located these areas by specific reference to an attached map. 3/ The provisions of the agreement also point to its binding effect stating:

> The above agreement is accepted and shall be binding on heirs or assignees of all licensees or permittees who are a party to this agreement unless otherwise altered or changed by the mutual consent of the undersigned licensees or permittees or their heirs or assignees, with the concurrence of the Bureau of Land Management. (Emphasis added.)

2/ Appellant not only signed the text of the agreement, he also signed the map itself, as did Dorius and Johnson.

3/ The range agreement specifies: Evart Jensen's class 1 obligation as 1733 AUM's; the current allowable carrying capacity as 1545 AUM's; Jensen to have exclusive use of pasture 3 in the Johnson-Jensen allotment, from May 1, to October 10, and November 10 to February 28; Jensen sheep operation to use Pasture "A" in the Dorius allotment during the period from September 1 through October 10 each year for his qualified numbers.

The agreement also emphasizes

> In accordance with the provisions of grazing regulation (43 CFR 4111.3-2(c)), 4/ we, the undersigned, hereby agree to the establishment or adjustment of our respective range allotment boundaries as shown on the attached map and further described as follows: . . . (emphasis added)

All substantive matters relative to appellant's grazing use in the Japs Valley Allotment after 1967 have been interpreted by reference to the limiting and conclusive effect of the terms of this agreement. Generally, valid range-line or allotment boundary agreements have been treated by the Department as enforceable contracts. They are entered into by two or more parties and the mutual promises of the parties to abide by the terms of the agreements and thus waive their rights to ask for a change in the line or boundary thus established constitutes ample consideration to support a contract. Mrs. Dulcie S. Williams, I.G.D. 280 (1942). As approved by the Department, they are determinations of the areas of use agreed upon. 43 CFR 4111.3-2(c). See n. 4. As to all those items clearly spelled out in the agreement 5/ and to the north-south division line represented by a complete legal description and a heavy, black line drawn across the attached map there can be no question as to their meaning. These items are unmistakably clear and are binding upon the parties unless changed by their mutual consent with the Bureau's approval.

This appeal is predicated on the appellant's contention that he has not entered into any agreement with regard to the western exterior boundary of his allotment. He acknowledges that he entered into the range line agreement of March 15, 1967, but insists that this agreement only affected the north-south division line between his and the Dorius allotment, in which he had reached accord with the Bureau and the other signatories. He alleges that at the time he signed the agreement he raised the question of his western boundary and was told that the agreement

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4/ This section of the regulations provides: Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by agreement or former practice will be followed when practicable, provided such division is in substantial conformity with the qualifications for grazing privileges of the respective applicants and the agreement is reduced to writing and approved by the District Manager.

5/ See n. 3.

did not cover that matter and that it could be resolved later on its merits. He states that he did not thereafter appeal the implementation of the agreement by the district manager's decision because, at that time, there was no apparent dispute and no reason to appeal.

Appellant's contentions with regard to the western exterior boundary are plausible in light of the available evidence. The text of the range line agreement is absolutely limited to the north-south division line. There is no reference whatever in the agreement to any changes in the outer perimeters of Jensen's original grazing allotment.

It is true that the map referred to by the written agreement does depict the exterior boundaries of the Japs Valley allotment. However, these are drawn with a fine, light line, whereas the north-south division line which is the subject of the agreement, is drawn with a heavy, dark line. The legend over the signature block on the map refers to the allotment division of March 15, 1967. The map is replete with unidentifiable information, including dotted, broken and solid lines, several sets of numbers superimposed on each other to the extent that many are unreadable, and various other unexplained computations. We cannot hold, absent compelling evidence to the contrary, that a person signing this map under these circumstances was thereby evincing his agreement with everything shown thereon.

The agreement refers to the map and the map refers to the agreement. The map was prepared so that its outstanding feature is the accurate graphic depiction of the line described in the text of the agreement. Indeed, the map, as employed here, is nothing more than an exhibit to the agreement, for which purpose it serves very well.

Reading in pari materia the documents at hand which relate to the range agreement of March 15, 1967, we are convinced that the agreement was limited to the location of the north-south division line between the Jensen/Johnson and the Clyde Dorius allotments, and that it did not fix the western exterior boundary.

Our review of the case has been hampered by the lack of record information, other than the appellant's evidence, as to the historical boundaries and use of this grazing unit, including such basic items as maps depicting prior allotment lines, or even the Bureau's copy of the current agreement and map. The hearing examiner determined that Jensen's current appeal may not be considered because he is challenging a matter previously adjudicated in a prior decision, citing 43

CFR 1853.1 (b). However, in light of our finding that the March 15, 1967, agreement is silent as to Jensen's western boundary and the limited record data upon which we can properly foreclose examination of this issue, we find that it is questionable whether this boundary dispute was the subject of any other prior or subsequent adjudication. Although Jensen participated in the formulation of his 1967 grazing privileges, it does not necessarily follow that the district manager's adjudication was intended as a final determination of the location of the western boundary, which is the issue raised in this appeal.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), we reverse the hearing examiner's order of June 23, 1970, and remand the case to that office for a further determination of the issues discussed herein and of the remaining issue reserved for hearing by the examiner.

Edward W. Stuebing, Member

We concur:

Joan B. Thompson, Member

Anne Poindexter Lewis, Member